

REMARKS

Applicant respectfully requests reconsideration and allowance of this application in view of the following comments.

Claims 1, 3-7, 8, and 10-13 are pending. Claims 2 and 9 were canceled in a paper filed on January 26, 2004. Claims 7, 11 and 12 were withdrawn in the paper filed on January 26, 2004. It is believed that no new matter has been added.

It is noted the claim 13 has not been examined in the merits in the Office Action. It was added in the paper filed on January 26, 2004. In Applicant's telephone conversation with the Examiner on September 15, 2005, the Examiner indicated that she would issue another non-final Office Action for claim 13. Applicant appreciates the Examiner for her time and courtesy with respect to this issue.

No amendments to the claims have been made at this time. A complete listing of the claims is provided above as requested by the Examiner in Applicant's telephone conversation with the Examiner on September 15, 2005.

Rejections under 35 USC 102

The Examiner rejected claims 1, 8 and 10 under 35 USC 102(e) as being anticipated by U.S. Patent No. 6,417,121 (Newkirk et al.). The Examiner found Newkirk to teach a laminate composite comprising a spunbond nonwoven laminated to a carded nonwoven web of staple fibers, wherein the suitable fibers include polypropylene staple

fibers. The Examiner also found the ultrasonic welding limitation to constitute a method limitation.

In response, Applicant would remind the Examiner that anticipation requires that each and every element as set forth in the claim must be found, either expressly or inherently described, in a single prior art reference, and, further, that the absence in the prior art reference of even a single claim element precludes a finding of anticipation. *See In re Robertson*, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999). Applicant submits that Newkirk does not teach the layer to be bonded by ultrasonic welding. Applicant point out that “ultrasonic welding” is not a method limitation as the Examiner alleges, but rather the term is descriptive of the bonding in the final product. Applicant refers the Examiner to the examples in the instant specification starting at page 7 which show “ultrasonically” laminated layers. Newkirk mentions bonding for fibers within a web at column 6, lines 25-27, but nothing is said about the bonding of the layers to each other. Newkirk contains no teaching of ultrasonic welding of the layers nor has the Examiner made no allegation of such in the reference. Accordingly, because Newkirk does not teach a wound dressing and/or compress which comprises layers which “are nondetachably bonded together by ultrasonic welding”, Applicant submits the claims are not anticipated.

In view of the foregoing, Applicant submits that the Examiner would be fully justified to reconsider and to withdraw this rejection. An early notice that this rejection has been reconsidered and withdrawn is, therefore, earnestly solicited.

Rejections under 35 USC 103

The Examiner rejected claim 9 under 35 USC 103(a) as being obvious over Newkirk. The Examiner's rejection of claim 9 is moot in view of the claim being canceled in an amendment filed on January 26, 2004. Applicant appreciates the Examiner's time on July 8, 2005 to clarify this issue.

Claims 1, 3-6 are rejected for obviousness over U.S. Patent No. 5,997,989 (Gessner et al.) in view of Newkirk. The Examiner found Gessner to teach a wound dressing comprising an outer polypropylene spunbond layer and a staple fiber nonwoven bonded together by ultrasonic welding. Newkirk was discussed above in the anticipation rejection. According to the Examiner, it would have been obvious to form the staple fiber layer in the wound dressing of Gessner with the polypropylene staple fiber layer of Newkirk to obtain the present invention.

In response, Applicant submits there must be some suggestion or motivation, either in the reference of knowledge generally available to a person skilled in the art to modify the teaching of the reference. *See MPEP §2143*. The mere fact that references can be combined or modified, which Applicants do not concede here, does not render the resulting combination obvious unless the prior art also suggests the desirability of the combination. *See In re Mills*, 16 USPQ2d 1430 (Fed. Cir. 1990). Applicant submits that a person skilled in the art would not have been led to the present invention, because there is no suggestion for both a spunbond and a nonwoven to be made of polypropylene.

Newkirk, as exemplified by its examples, contemplates a blend of polypropylene and polyethylene in its fibers. By way of illustration, example 1 in Newkirk discloses a spunbond which has both polypropylene and polyethylene. The other examples in Newkirk follow this general trend of disclosing a blend of both materials. Most if not all of the examples in Gessner disclose embodiments which shows both polypropylene and polyethylene. The Examiner appears to "pick and choose" polypropylene but dismisses the rest of Newkirk. Applicant submits that it has previously been held that

It is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art.

See In re Wesslau, 147 USPQ 391, 393 (CCPA 1965). The Examiner, by picking and choosing polypropylene in Newkirk appears to neglect the full teachings thereof when Newkirk contemplates a blend as discussed above. Therefore, when the teachings are taken as a whole, there is no suggestion in the combination of references for the present invention which require polypropylene in both the spunbond and nonwoven. Applicant refers the Examiner to the examples in the instant specification for support of this proposition. Accordingly, the claims are not rendered obvious by the combination of Gessner and Newkirk.

Regarding the dependent claims 3 – 6, Applicant point out that because the limitations of the base claims are incorporated into the dependent claims by reference, the

limitations of claim 1 as discussed above cannot be overcome by what are allegedly taught by the combined teachings of Gessner and Newkirk. See *In re Fine*, 5 USPQ2d 1596 (Fed. Cir. 1988) ("Dependent claims are nonobvious under section 103 if the independent claims from which they depend are nonobvious.")

In view of the foregoing, Applicant submits that the Examiner would be fully justified to reconsider and to withdraw these rejections. An early notice that these rejections have been reconsidered and withdrawn is, therefore, earnestly solicited.

Closing

Applicant believes that the foregoing constitutes a bona fide response to all outstanding objections and rejections.

Applicant also believes that this application is in condition for immediate allowance. However, should any issue(s) of a minor nature remain, the Examiner is respectfully requested to telephone the undersigned at telephone number (212) 808-0700 so that the issue(s) might be promptly resolved.

Early and favorable action is earnestly solicited.

CONDITIONAL PETITION FOR EXTENSION OF TIME

If entry and consideration of the amendments above requires an extension of time, Applicant respectfully requests that this be considered a petition therefor. The Assistant Commissioner is authorized to charge any fee(s) due in this connection to Deposit Account No. 14-1263.

ADDITIONAL FEE

Please charge any insufficiency of fees, or credit any excess, to Deposit Account No. 14-1263.

Respectfully submitted,
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By 

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